

Message Text

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PAGE 01 ZURICH 00719 291316Z

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ACTION EUR-12

INFO OCT-01 ISO-00 SSO-00 SEC-01 L-03 SS-15 NSC-05 EB-07

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FM AMCONSUL ZURICH

TO SECSTATE WASHDC IMMEDIATE 2216

INFO AMEMBASSY BERN

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E.O. 11652: N/A

TAGS: CFED, EFIN, SZ

SUBJ: SEC ACTION AGAINST AMERICAN INSTITUTE COUNSELORS AND OTHERS

REF: (A) STATE 280860; (B) BERN 5256

1. SWISS CREDIT BANK GENERAL DIRECTOR FESSLER CALLED ME ON DECEMBER 29 TO ASK IF WE COULD DO ANYTHING TO HELP WITH AN ASPECT OF BANK'S CURRENT PROBLEMS WITH THE SEC. FESSLER INDICATED THAT IN DISCUSSIONS WITH SEC, SCB HAS AGREED TO SET UP FUNDS IN US EQUIVALENT TO AMOUNT HARWOOD GROUP HAS DEPOSITED IN ZURICH. HOWEVER, CONTRARY TO REPORTS THE FUNDS HAVE NOT YET BEEN TRANSFERRED BECAUSE THE SEC HAS NOT YET AGREED TO THE INSTRUMENTALITY PROPOSED BY SCB.

2. FESSLER SAID THE SRB HAS OFFERED TO ESTABLISH A LETTER OF CREDIT PAYABLE TO THE SSC FOR THE AGREED UPON AMOUNT (APPROXIMATELY DOLLARS 122 MILLION). IT WOULD BE A NORMAL LETTER OF CREDIT - A LEGALLY BINDING INSTRUMENT. ACCORDING TO FESSLER SEC HAS INDICATED THAT IT DESIRES IN ADDITION THAT THE LETTER OF CREDIT BE VERIFIED OR GUARANTEED BY ANOTHER BANK AND THAT UNTIL NOW SEC HAS BEEN INFLEXIBLE ON THIS POINT.

3. I GATHERED FROM FESSLER THAT SCB IS OFFENDED BY THE SEC REQUEST AND DOES NOT WISH TO COMPLY AS THIS WOULD SUGGEST DOUBT AS TO SCB'S BEING GOOD FOR THE AMOUNT. FESSLER MADE TWO FURTHER
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PAGE 02 ZURICH 00719 291316Z

POINTS WHICH HE SAID MADE THE SEC DEMAND SUPERFLUOUS. FIRST,

SCB HAS AN ACTIVE BUSINESS AND CONSIDERABLE ASSETS IN THE US UNDER US JURISDICTION. SECOND (FOR THEORETICAL ARGUMENT ONLY), IF FOR SOME REASON THE SEC COULDN'T COLLECT ON THE LETTER OF CREDIT IN THE US IT COULD COLLECT IN ZURICH, AS THE LETTER OF CREDIT WOULD BE A BINDING LEGAL INSTRUMENT IN SWITZERLAND AS WELL AS IN THE US. FESSLER COMMENTED THAT SCB FEELS THAT IN THE CIRCUMSTANCES, REQUIRING A FURTHER GUARANTEE TO A SCB LETTER OF CREDIT WOULD BE ENTIRELY UNNECESSARY AND FOR THE SCB TO COMPLY WOULD BE DEGRADING. HE ASKED IF ANYTHING COULD BE DONE TO ASSURE SEC THAT IT NEED HAVE NO CONCERN OVER THE ABILITY OF SCB TO STAND BEHIND ITS LETTER OF CREDIT.

4. WE HAVE NOT HEARD SEC'S VERSION OF THIS MATTER. SINCE WE REGULARLY SEE SCB OFFICIALS AND NUMEROUS OTHER BANKERS WHO ARE ALSO FOLLOWING THE CASE WITH INTEREST, WE WOULD APPRECIATE CONFIRMATION THAT THIS DISAGREEMENT AND THE SEC POSITION IS AS STATED ABOVE. IN ADDITION, WE WOULD APPRECIATE GUIDANCE ON HOW TO RESPOND TO THE SCB REQUEST. NELSON

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Decaption Note:
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Disposition Approved on Date:
Disposition Authority: MorefiRH
Disposition Case Number: n/a
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Disposition Date: 28 MAY 2004
Disposition Event:
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